



INLAND REVENUE BOARD MALAYSIA

**WITHHOLDING TAX ON SPECIAL
CLASSES OF INCOME**

**SECOND ADDENDUM TO
PUBLIC RULING NO. 4/2005**

Translation from the original Bahasa Malaysia text

DATE OF ISSUE: 4 JANUARY 2010



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DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**

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1. This Second Addendum provides clarification on the change in tax treatment of the following:
 - (a) Derivation of special classes of income;
 - (b) Reimbursements or disbursements on hotel accommodation;
 - (c) Income derived from the rental of International Standard Organisation (ISO) containers by a Malaysian shipping company; and
 - (d) Income or fees received by providing technical advice or training in specific field.

2. Derivation of special classes of income

Effective from 09.01.2009, subparagraph 5.1(a) of the Public Ruling No. 4/2005 is substituted with the following subparagraph:

- (a) the responsibility for the payment lies with the Government, a State Government or a local authority;

3. Reimbursements or disbursements on hotel accommodation

Reimbursements or disbursements relating to hotel accommodation in Malaysia are part of the gross income falling under section 4A of the Income Tax Act 1967 (ITA) and are subject to withholding tax of 10% under section 109B of the ITA. Effective from 01.01.2009, reimbursements or disbursements on hotel accommodation is not to be included in the computation of gross income for the purposes of withholding tax. The exemption is aimed to reduce the cost of services provided by non-resident. Hotel accommodation means accommodation in hotel, apartment hotel, service apartment, motel or hostel.

Example 1:

Melamin Sdn Bhd engaged the engineering services of Scan Ltd (a Scandinavian company) for installation of a plant in its factory building. The services fees were agreed to be USD50,000. In addition, Melamin Sdn Bhd had to pay the hotel accommodation expenses for 2 engineers of Scan Ltd in Hilton Hotel. The services were performed in Malaysia from 10.01.2009 to 20.01.2009. The hotel bills incurred were RM5,000 and were paid on 21.01.2009. The amount due to Scan Ltd was settled on 29.01.2009 via telegraphic transfer.

As disbursements on hotel accommodation are not subject to withholding tax anymore, Melamin Sdn Bhd has to withhold tax of 10% on services fees of USD50,000 only. Assuming that the exchange rate was USD1=RM3.60 on 29.01.2009, the amount withheld and actual payment due to Scan Ltd are computed as follows:



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<i>Services fees (USD50,000 @3.60)</i>	<i>RM180,000</i>
<i>Less: withholding tax (10%)</i>	<i>18,000</i>
<i>Payment due to Scan Ltd</i>	<i>162,000</i>

The amount of withholding tax RM18,000 should be remitted to the Director General of Inland Revenue by 28.02.2009.

4. Paragraph 8 of the Public Ruling No. 4/2005 is amended by inserting the following new subparagraph after subparagraph 8.3(ii):

(iii) Income derived from the rental of International Standard Organisation (ISO) containers by a Malaysian shipping company

A non-resident person who receives income derived from the rental of ISO containers by a Malaysian shipping company is exempted from withholding tax from 20.10.2001 under the Income Tax (Exemption) (No. 24) Order 2002 - [P.U.(A) 210/2002].

For the purpose of this subparagraph, Malaysian shipping company has the same meaning as in subparagraph 8.3(ii)b.

5. Paragraph 12 of the Public Ruling No. 4/2005 is amended by inserting the following new subparagraphs after Example 20 of subparagraph 12.1(d):

12.2 Income received from an approved MSC status company

To encourage the growth of information and communication technology (ICT) in Malaysia, the government has offered a few incentives to companies involved in this field. One of the incentives is exemption from withholding tax on payments received by a non-resident company for providing technical advice or technical services to an approved MSC status company. The exemption is effective from 01.10.2002 under the Income Tax (Exemption) (No. 13) Order 2005 - [P.U.(A) 102/2005].

Approved MSC status company is a company which has been awarded MSC status by the Multimedia Development Corporation (MDeC) and engaged in the activities of regional IT solutions hub, regional internet exchange, regional data centre, regional internet data centre and regional call centre, and located in specific areas such as Cyberjaya, Technology Park Malaysia – Phase 1, University Putra Malaysia – Malaysia Technology Development Corporation Incubator 1 and Petronas Twin Towers.

12.3 Income derived from providing training to Malaysians in specific expert areas, crafts and performing arts

Income received by a non-resident expert who trains Malaysians in performing arts and crafts is subject to withholding tax of 10% on the gross income. As an incentive to attract more foreign experts to train Malaysians to improve the quality of performing arts and craft production, the income of a non-resident expert who trains Malaysians in specific expert areas, crafts and performing arts is exempted from withholding tax. The exemption is effective for applications received and verified by the Ministry of Culture, Arts and Heritage from 01.10.2005 until 30.09.2010 {Income Tax (Exemption) (No. 21) Order 2006 - [P.U.(A) 206/2006]}.

For the purpose of the exemption-

- (i) specific expert areas are areas related to music, choreography, cinematography, prop set, costume and stage technical;
- (ii) crafts is any artistic product which is graced with cultural or traditional appeal and is the outcome of any process which is directly or indirectly, solely or partly based on manual skill or craftsmanship, and includes any batik product; and
- (iii) performing arts includes stage performing in theatre, music and dance.

12.4 Income of a non-resident individual who is an expert in Islamic finance

The government aspires to make Malaysia an International Islamic Financial Centre (MIFC). In order to achieve the aspiration, an incentive to attract leading global experts in Islamic finance to participate in MIFC is introduced under the Income Tax (Exemption) (No. 3) Order 2008 – [P.U.(A) 114/2008]. Pursuant to the exemption order, income received by the non-resident experts in Islamic finance (as verified by the MIFC Secretariat) which is classified as income under paragraph 4A(ii) of the ITA is exempted from withholding tax from 08.09.2007 until 31.12.2016.

12.5 Income of a non-resident person for providing training approved by the Minister

Technical fees paid to non-resident persons are subject to withholding tax of 10% on the gross income. To ensure a sufficient pool of skilled manpower and to strengthen the competitiveness of Malaysian professionals, the government has given tax incentive to non-resident persons who provide technical training to any employee of a resident person under the Income Tax (Exemption) (No. 3) Order 2009 - [P.U.(A) 262/2009]. Pursuant to the exemption order, income received by non-resident persons is exempted



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from withholding tax from 30.08.2008 until 31.12.2012 if they provide technical training under the programme of:

- (i) post graduate course in information technology and communication, electronics or life sciences;
- (ii) post basic course in nursing or allied healthcare; or
- (iii) aircraft maintenance engineering course.

The courses mentioned above must be approved by the Minister of Finance.

6. This Second Addendum forms part of the Public Ruling No. 4/2005.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**